

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 37-22042
Date Received: 8/5/2003
Receipt No:
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

ROBERT EARL FOSNOT Phone: (208)788-3642
PO BOX 290
BELLEVUE ID 83313

PAUL R FOSNOT Phone:
837 LAUREL AVE
POMONA CA 91767

2. Date of Priority: 06/12/1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02N	18E	36	NE SW NW	BLAINE	

5. Description of diverting works:

DIVERSION DAM, HEADGATE, CANAL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	0.04	

7. Total Quantity Appropriated is:
0.04 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
----------	-------	---------	----------------	-----	-------

01N	18E	24	NE	SE	IRRIGATION	2.7
					Section Acres	2.7
					Total Acres	2.7

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

8/05/2003: CLAIM 37-11688 WAS SPLIT BY OWNERSHIP INTO 37-21145 (FOSNOT) AND 37-21146 (GOWEN). NOTE THAT THERE ARE 2.7 ACRES IN THE NWNESE SEC 24 THAT ARE NOT OWNED BY FOSNOT BUT INCLUDED IN THIS CLAIM. CURRENT OWNER OF 2.7 ACRES IS MARK SWENKE PO BOX 3630 HAILEY. SEE 37-11689B AND WDEED WITH THAT CLAIM. - VH

COPIED FROM REMARKS CLAIM 37-11688:
OTHER WATER RIGHTS USED - 37-11689. THIS THIS CLAIM WAS PART OF DECREED RIGHT NUMBER 37-353.

This right is a split from former right 37-21145.

15. Basis of Claim: Decreed

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED
DEC 11 2006

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. DEPT. OF WATER RESOURCES
SOUTHERN REGION
Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
	37-21145	✓			

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or SURVEY MAP clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former
Owner/Claimant(s)

Robert Earl Fosnot & Paul Fosnot
Hailey, ID & Pomona, CA

4. New Owner/Claimant(s)

James A & Janet A Super

Name Connector (Check one): ☐ and, ☐ or, ☐ and/or

New Mailing Address

PO Box 598

City, State and ZIP Code

Bellevue, ID 83316

New Telephone Number

() 988-7731

5. Date you acquired the property

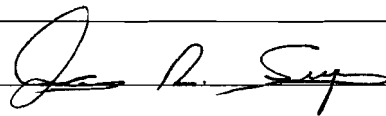
8-23-2002

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT		
(If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	0.23 cfs	16 acres NE/SE Sec. 24
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	0.23 cfs	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT		
(If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

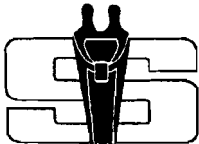
7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)



For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by JS Date 12-4-06 Fee -
 Receipted by - Date - Receipt No. -
 Processed by - AJ Date - WR - Date -



Instrument # 469668

HAILEY, BLAINE, IDAHO

2002-08-23

04:16:00 No. of Pages: 2

Recorded for : BLAINE COUNTY TITLE

MARSHA RIEMANN

Fee: 6.00

Ex-Officio Recorder Deputy

Index to: WTY/QC/CORP DEED

RECEIVED
DEC 03 2003

Department of Water Resources
Southern Region

WARRANTY DEED

For Value Received ROBERT E. FOSNOT and LEANORA LEIGH FOSNOT, husband and wife

the Grantor hereby grants, bargains, sells, conveys and warrants unto JAMES R. SUPER and JANET A. SUPER, husband and wife

the Grantee whose current address is: 10783 HWY 75, BELLEVUE, ID 83313

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

Parcel Number: 01N18024075AA

SUBJECT TO: Current General Taxes, a lien in the process of assessment, not yet due or payable. Easements, restrictions, reservations, provisions of record, and assessments, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: August 22, 2002

ROBERT E. FOSNOT

LEANORA LEIGH FOSNOT

State of IDAHO

ss.

County of BLAINE

On this 23rd day of August, 2002, before me, the undersigned, a Notary Public, in and for said State, personally appeared ROBERT E. FOSNOT and LEANORA LEIGH FOSNOT

_____, known to me, and/or identified to me on the basis of satisfactory evidence, to be the person(s) whose name is/are subscribed to the within instrument

LEGAL DESCRIPTION

Order Number: 02011064

Township 1 North, Range 18 East, Boise Meridian, Blaine County, Idaho

Section 24: A parcel of land more particularly described as follows:

Commencing at an iron pin marking the East 1/4 corner of said Section 24;
which is also the REAL POINT OF BEGINNING;

Thence South 0°31'00" East, 664.5 feet along the East boundary of said Section 24 to an iron pin;

Thence South 89° 43'23" West, 1313.3 feet to a point on the East boundary of U.S. Highway No. 93;

Thence North 0° 31'00" West, 305.68 feet along said East boundary of U.S. Highway No. 93;

Thence North 89°29'00" East, 327.85 feet to an iron pin;

Thence North 1°38'00" East, 357.94 feet to an iron pin;

Thence North 89°40'30" East, 971.93 feet to the TRUE POINT OF BEGINNING

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 37-21145
Date Received: 8/5/2003
Receipt No:
Received By: *O/C*
WJH

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

ROBERT E FOSNOT Phone:
PO BOX 290
BELLEVUE ID USA 83313

PAUL R FOSNOT Phone: (714)622-3475
837 LAUREL AVE
POMONA CA USA 91767

2. Date of Priority: 06/12/1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02N	18E	36	NE SW NW	BLAINE	

5. Description of diverting works:

DIVERSION DAM, HEADGATE, CANAL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	0.29	

7. Total Quantity Appropriated is:
0.29 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
01N	18E	24	NE SE	IRRIGATION	20
Section Acres					20
Total Acres					20

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

COPIED FROM REMARKS CLAIM 37-11688: OTHER WATER RIGHTS USED - 37-11689.
THIS CLAIM WAS PART OF DECREED RIGHT NUMBER 37-353.

8/05/2003: CLAIM 37-11688 WAS SPLIT BY OWNERSHIP INTO 37-21145 (FOSNOT) AND 37-21146 (GOWEN). NOTE THAT THERE ARE 2.7 ACRES IN THE NWNESE SEC 24 THAT ARE NOT OWNED BY FOSNOT BUT INCLUDED IN THIS CLAIM. CURRENT OWNER OF 2.7 ACRES IS MARK SWENKE PO BOX 3630 HAILEY. SEE 37-11689B AND WDEED WITH THAT CLAIM. - VH

15. Basis of Claim: Decreed

Form 42-348(4)-140P(6) July, 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s)	Adjudication Claim No(s)	Split	Water Right No(s)	Adjudication Claim No(s)	Split
WR A 37-11688					
WR 37-353B					
WR 37-011685					

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Robert E. Fosnott (and) Paul R. Fosnot
PO Box 290, Bellevue ID 83313
4. New Owner/Claimant(s) Mark Allen Gower and Bette Will Gower
 Name Connector (Check one): ☐ and, ☐ or, ☐ neither
- New Mailing Address PO Box 912
- City, State and ZIP Code Bellevue ID 83313
- New Telephone Number ()
5. Date you acquired the property 7/31/03

RECEIVED

AUG 04 2003

Department of Water Resources
 Southern Region

Form 42-218/41-140900 July, 2000

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)

[Signature: John Allen Jensen]
[Signature: Betty Wilk Jensen]

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by _____ Date _____ Fee _____
 Received by _____ Date _____ Receipt No. _____
 Processed by _____ AJ Date _____ WR _____ Date _____

WARRANTY DEED

FOR VALUE RECEIVED

ROBERT E. FOSNOT, a married man, as his sole and separate property

the grantor, does hereby grant, bargain, sell and convey unto

MARK ALLEN GOWER AND BETTE WILL GOWER, husband and wife

the grantees, whose current address is **PO Box 912**
Bellevue, ID 83313

the following described premises, in **BLAINE COUNTY, IDAHO**, to wit:

Lot 1 of DEAN RANCH SUBDIVISION, BLAINE COUNTY, IDAHO, according to the official plat thereof, on file in the office of the County Recorder, as Instrument No. 169670, records of Blaine County, Idaho.

SUBJECT TO: Taxes, easements, restrictions, reservations, assessments and encumbrances as shown of record, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees and their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantees, that he is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: July 15, 2003

Robert E. Fosnot
Robert E. Fosnot

State of: MT

County of: MADISON

On this 21st day of July, 2003, Before me a Notary Public in and for said State, personally appeared Robert E. Fosnot known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Debra Ann Kelley
Notary Public

Residing at Edwils

Comm. Expires 10-22-2006

IN 18E
SE 10E
Sec 24

AGGREGATE ACRES
SUBDIVISION

DEAN RANCH SUBDIVISION

HIGHWAY

STATE

10785

10783

10773

10769

10767

10759

10785

10749

10739

10737

COVER

FOSNOT

13 18
24 19

8b
8a

7
6

5
4

3
2

1

SEE BLAINE CO
TAXLOT GIS Layer
for updated
Boundary info
N4

0 25

2514

2500

R. 18 E.
R. 19 E.

PERO

ROAD 21

5
ROAD

107

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-11688
Date Received: 10/17/1988
Receipt No: M001608
Received By: GG

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ROBERT EARL FOSNOT 208-783-3642
Address: P.O. BOX 290
BELLEVUE, ID 83313

OR

Name: PAUL R. FOSNOT 714-622-3475
Address: 837 LAUREL AVE.
POMONA, CA 91767

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
02N	18E	36	NE	SW	NW		BLAINE

5. Description of diverting works:
DIVERSION DAM, HEADGATE, CANAL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.400		

7. Total Quantity Appropriated is:
0.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 69.7 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

A37-11688

Page 1

Date: 10/17/88

MICROFILMED

FEB 25 1988

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	18E	24	SE	NE		IRR	7.9
			NE	SE		IRR	20.0
Section Acres							27.9
Total Acres							27.9

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A37-16689

14. Remarks:
THIS CLAIM WAS PART OF THE DECREED RIGHT NUMBER 37-00353

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 12/13/1909

S. C. FROST, ET AL
Decree Plaintiff

ALTURAS WATER CO., ET AL
Decree Defendant

COPY

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): *Robert E. Inhof* Date: X 10/17/88
Date:

State of Idaho)
County of BLAINE) SS.

Subscribed and sworn (or affirmed) before me this 17th day
of Oct 19 88

Walter Gene Gibson
Notary Public

Seal

Residing at Boise, Id
My Commission Expires 9-2-1994

COPY

rces

ADDRESS SERVICE
REQUESTED

FIRST CLASS



UNITEL
02 1A
00043
MAILER

 **ATTEMPTED,
NOT KNOWN**

RECEIVED

JAN 11 2007

DEPARTMENT OF
WATER RESOURCES

37-22042

~~FOI NOT ROBERT EARL~~
~~PO BOX 290~~



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

SOUTHERN REGION

April 2, 2007

Mark Swenke
PO Box 3630
Hailey, ID 83333

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

RE: SRBA Recommendations For Your Property South Of Bellevue

Dear Mr. Swenke;

There were 2 claims covering your property in the SRBA. Claim 37-11689B was for 6.85 inches of 10-15-1884 water, and has been recommended for the irrigation of 2 acres. As I recall, the deed for your purchase of the property specifically described this water as being conveyed with the property. This 61 gallons per minutes, which is probably way more than you can use to sprinkle your land even with a large conveyance loss in the District Canal. No attempt was made to reduce the diversion rate based on the amount of land irrigated.

Claim 37-22042 was for 2 inches of 6-12-1886 water. This water was never legally appurtenant to your property according to our records, and was not specifically mentioned in the deed. I therefore concluded that you do not own any of this water right, so this claim has been recommended for disallowal.

Per your request, a second copy of the disallowal recommendation is enclosed. An objection form is also enclosed.

Regards,

James E. Stanton
Sr. Water Resource Agent

12/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-22042
NAME AND ADDRESS: ROBERT EARL FOSNOT
PO BOX 290
BELLEVUE ID 83313

PAUL R FOSNOT
837 LAUREL AVE
POMONA CA 91767

MARK J SWENKE
PO BOX 3630
HAILEY ID 83333

DISALLOWED

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 0.040 CFS

PRIORITY DATE: 06/12/1886

POINT OF DIVERSION:

T02N R18E S36 NESWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	0.040 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S24 NESE 2.70

2.7 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

EXPLANATORY MATERIAL: BASIS OF CLAIM -

This claim is a split from former right 37-353 and former claim 37-21145.

No beneficial use found.

11/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-21145

NAME AND ADDRESS: JAMES R SUPER
PO BOX 598
BELLEVUE ID 83313

JANET A SUPER
PO BOX 598
BELLEVUE ID 83313

MARK J SWENKE
PO BOX 3630
HAILEY ID 83333

ROBERT EARL FOSNOT
PO BOX 290
BELLEVUE ID 83313

PAUL R FOSNOT
837 LAUREL AVE
POMONA CA 91767

DISALLOWED

SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

QUANTITY: 0.290 CFS

PRIORITY DATE: 06/12/1886

POINT OF DIVERSION:

T02N R18E S36 NESWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	0.290 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S24 NESE 20.00

20 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

No beneficial use found.

EXPLANATORY MATERIAL: BASIS OF CLAIM -

This claim is a portion of former Right 37-353.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 37-21145 V1

WATER RIGHT NUMBER: 37-21145 V1

<u>Owner Type</u>	<u>Name and Address</u>
Present Owner	JAMES R SUPER PO BOX 598 BELLEVUE, ID 83313 (208)788-7731
Present Owner	JANET A SUPER PO BOX 598 BELLEVUE, ID 83313 (208)788-7731
Present Owner	MARK J SWENKE PO BOX 3630 HAILEY, ID 83333 (208)788-1160
Current Owner	ROBERT EARL FOSNOT PO BOX 290 BELLEVUE, ID 83313 (208)788-3642
Current Owner	PAUL R FOSNOT 837 LAUREL AVE POMONA, CA 91767

Priority Date: 06/12/1886

Basis:

Status: Disallowed

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 11/01	0.290 CFS	
	<u>Total Diversion:</u>	0.290 CFS	

Location of Point(s) of Diversion

BIG WOOD RIVER	NE1/4SW1/4NW1/4	Sec. 36, Twp 02N, Rge 18E, B.M.
BLAINE County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	18E	24													20.0				20.0

Total Acres: 20

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 37-21145 V1

Conditions of Approval:

1. P03 No beneficial use found.
2. This claim is a portion of former Right 37-353.

Remarks:Comments:

1. jstanton 11/28/2006 Claim Review

Comment: GW License 37-7020 was appurtenant to the NE/SE Sec. 24 and other land, but was not claimed here. The entire rate was claimed on the other land by someone else, and was recommended that way. So I assume that only surface water can be used to irrigate the land covered by 37-21145.

A portion of 37-353 was transferred to Lot 1 of the Dean Ranch Sub (now owned by Gower) in 1983. A portion of 37-665 was transferred to the NE/SE Sec. 24 (now owned by Super & Swenke) about that same time by Fosnot. But when the claims were filed in 1988, Fosnot claimed both rights on all the property. Gower has claimed portions of both rights on Lot 1, and the watermaster records reflect this split of both. But neither Super or Swenke have claimed any of 353, even though the watermaster told them a year ago that they needed to do so; his records show that each has a portion of this right, in addition to their 665 water. The chain of deeds from Fosnot clearly states that Swenke get 6.875 inches of 665 (which has a much better priority date than 353), so it appears that Swenke is satisfied with the early water.

In 2002, Fosnot still owned the Super property and Lot 1. At that time, he created an easement agreement with Super stating that the 353 water was appurtenant to Lot 1 and that the 665 water was appurtenant to what Super was buying. The agreement created a right of way for a pump site in the District Canal on Lot 1 for use on both parcels. The warranty deed to Super was silent on water, but only the appropriate portion of the Fosnot claim on 665 was put into the name of Super (37-21147). The easement agreement makes it clear that none of the 353 water belongs to Super, which probably explains why he has not claimed it.

Fosnot sold Lot 1 to Gower in 2003, and the deed was silent on water. Based on the deed and the claim, portions of both rights (353 & 665) were put in the name of Gower.

It appears to me that neither Super nor Swenke are interested in their portions of 37-353, even though the water is still claimed by Fosnot (the original claimant). I therefore proposed to disallow Claim 37-21145. Both of the current land owners have plenty of 1884 water for what they irrigate plus a reasonable conveyance loss. This will solve the problem of 353 being over-claimed, allowing the recommended parts of the right to be decreed as claimed with regard to the diversion rate. The other alternative is to cut everyone back by up to 5%, which does not seem reasonable. The land under this claim was never part of the legally-allowed pou, so it does not seem fair to penalize people who are using water legally.

2. jstanton 11/28/2006 Remarks

Comment: COPIED FROM REMARKS CLAIM 37-11688:

OTHER WATER RIGHTS USED - 37-11689. THIS THIS CLAIM WAS PART OF DECREED RIGHT NUMBER 37-353.

3. jstanton 11/28/2006 Remarks2

Comment: 8/05/2003: CLAIM 37-11688 WAS SPLIT BY OWNERSHIP INTO 37-21145 (FOSNOT) AND 37-21146 (GOWEN). NOTE THAT THERE ARE 2.7 ACRES IN THE NWNESE SEC 24 THAT ARE NOT OWNED BY FOSNOT BUT INCLUDED IN THIS CLAIM. CURRENT OWNER OF 2.7 ACRES IS MARK SWENKE PO BOX 3630 HAILEY. SEE 37-11689B AND WDEED WITH THAT CLAIM. - VH

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 37-21145 V1

Dates and Other Information:

Decreed Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Defendant:
 Plaintiff:
 Civil Case Number:
 Judicial District:
 Notice of Error Flag:
 State or Federal: S
 Owner Name Connector: OR
 Water District Number:
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Summary			11/28/2006	jstanton	Disallowed

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Summary	11/28/2006 4:23:43 PM	jstanton	(Yes) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 2. Does any evidence indicate a five year period of continuous nonuse occurred that could result in recommending forfeiture or partial forfeiture? (No) 4. Is any portion of the claim be recommended? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (Yes) 8. Is this a split or combined right? (Yes) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
Summary	11/3/2006 4:58:58 PM	CFRITSCH	Bulk Copy

Water Supply Bank:



Instrument # 459888
 HAILEY, BLAINE, IDAHO
 2002-08-27 Date: 00 No. of Pages: 2
 Recorded for: BLAINE COUNTY TITLE
 MARSHA RIEBMAN Fee: 6.00
 Ex-Gratia Recorder Depts.
 Date: 11/27/06/0007 0000

WARRANTY DEED

For Value Received ROBERT E. FOSNOT and LEANORA LEIGH FOSNOT, husband and wife

the Grantor hereby grant, bargain, sell, conveys and warrants unto JAMES A. SUPPER and JAMET A. SUPPER, husband and wife

the Grantee whose current address is: 10702 NW 75, BELLEVUE, ID 83313

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

Parcel Number: 01ML0034075AA

SUBJECT TO: Current General Taxes, a lien in the process of assessment, not yet due or payable. Easements, restrictions, reservations, provisions of record, and encumbrances, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: August 27, 2002

Robert E. Fosnot
 ROBERT E. FOSNOT

Leanora Leigh Fosnot
 LEANORA LEIGH FOSNOT

State of IDAHO

IN

County of BLAINE

On this 23rd day of August, 2002, before me, the undersigned, a Notary Public, in and for said State, personally appeared ROBERT E. FOSNOT and LEANORA LEIGH FOSNOT

known to me, and/or identified to me on the basis of satisfactory evidence, to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

Kathy Seal
 Notary Public KATHY SEAL
 Residing at: KETCHUM
 Commission Expires: July 09, 2005



FROM : WATER 37 37M

FAX NO. : 2088867930

MAR-30-2004 TUE 09:17 AM BLAINE CO TITLE HAILEY

FAX NO. 1200.001000

Nov. 28 2006 10:50AM P5

0/0

LEGAL DESCRIPTION

Order Number: 02011066

Township 1 North, Range 10 East, Boise Meridian, Blaine County, Idaho

Section 24: A parcel of land more particularly described as follows:

Commencing at an iron pin marking the East 1/4 corner of said Section 24;

which is also the REAL POINT OF BEGINNING;

Thence South 0°31'49" East, 444.5 feet along the East boundary of said Section 24 to an iron pin;

Thence South 89° 43'15" West, 1313.3 feet to a point on the East boundary of U.S. Highway No. 93;

Thence North 0° 31'00" East, 305.62 feet along said East boundary of U.S. Highway No. 93;

Thence North 89°35'00" East, 327.85 feet to an iron pin;

Thence North 1°38'00" East, 157.54 feet to an iron pin;

Thence North 89°40'30" East, 571.33 feet to the REAL POINT OF BEGINNING

EASEMENT AGREEMENT

THIS GRANT OF EASEMENT ("Agreement") is made and entered into this 17th day of August, 2002, by and among: Robert E. Fosnot, a married man (hereinafter "GRANTOR") and JAMES R. SUPER (hereinafter "GRANTEE")

RECITALS:

A. GRANTOR currently owns two parcels of land described in Exhibit A (hereinafter "Lot A and/or Servient Estate") and Exhibit B (hereinafter "Lot B and/or Dominant Estate"), both Exhibits attached hereto, according to the records and plats thereof on file in the records of Blaine County, Idaho:

B. Water right 37-11688 is appurtenant to Lot A, and water right 37-00665D is appurtenant to Lot B; Super

C. There exists on Lot A an irrigation system (hereinafter "irrigation system") that serves Lot B, said irrigation system located, more or less, on the southerly most forty (40) feet of Lot A. The irrigation system is used to deliver and convey water rights 37-11688 and 37-00665D;

D. The GRANTOR desires to sell Lot B to GRANTEE; and

E. Both the GRANTOR and GRANTEE desire to create an easement on Lot A for the benefit of the GRANTEE for the use of the irrigation system on Lot A;

TERMS AND CONDITIONS

NOW THEREFORE, the parties mutually covenant and agree as follows:

1. GRANT OF EASEMENT. GRANTOR hereby grants to GRANTEE a permanent, perpetual, and exclusive easement over, across and through forty (40) feet of the southern boundary of Lot A (hereinafter "Easement Premises") for the purposes and subject to the terms, covenants and conditions hereinafter set forth. The GRANTOR reserves the right to use the easement for any use that will not interfere with the GRANTEE'S full enjoyment of the rights granted hereunder. The irrigation system shall not be moved outside of the easement premises without the written consent of the GRANTEE.

2. USE AND PURPOSE OF EASEMENT. GRANTEE shall have the right to use the Easement Premises for any purpose necessary to access the irrigation system on Lot A.

3. TERMINATION OF EASEMENT. The Easement shall automatically expire should the owner of Lot B abandon or forfeit water right 37-00665D. The Easement shall also expire should water right 37-00665D be transferred to some place of use other than Lot B. If any portion of water right 37-00665D is transferred off of Lot B, then the owner of the transferred

AGREEMENT - 1

Instrument # 471628

HAILEY, BLAINE, IDAHO

2002-10-05 01:55:00 No. of Pages: 1

Recorded for: JAMES R SUPER

MARSHA REEMANN

Fee: 12.00

Ex-Officio Recorder Deputy

Index to: EASEMENTS

[Handwritten signature]

[Handwritten signature]

Super Lot B

Gower Lot A

portion shall not have any access under this Agreement to Lot A, without the express written consent of the owner of Lot A.

4. MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION OF IRRIGATION SYSTEM. The GRANTEE and GRANTOR shall be responsible for all costs and fees necessary for the routine maintenance, repair, replacement, and operation of the irrigation system located on Lot A, including, but not limited to, the cost of power bills. The proportionate responsibility for each party is based on the number of irrigable acres established for each water right. If the number of irrigable acres for each water is changed or altered, as determined by the Idaho Department of Water Resources ("IDWR") or the Snake River Basin Adjudication ("SRBA") Court, then the proportionate share of costs and fees will be adjusted accordingly. At the time of this Agreement, the proportionate share of costs and fees is as follows: GRANTEE is responsible for sixty-nine percent (69%) of all costs and fees, and GRANTOR is responsible for thirty-one percent (31%) of all costs and fees. The failure to pay the proportionate costs or fees described herein shall allow either party to enjoin the other from using the irrigation system located on the easement premises.

5. DAMAGE TO IRRIGATION SYSTEM OR EASEMENT PREMISES. Notwithstanding the provisions of Paragraph 4, each party shall be solely responsible for any damage to the irrigation system that is proximately caused by that party's conduct. Furthermore, GRANTOR shall be responsible for any damage caused to the Easement Premises, where such damage was proximately caused by the GRANTEE.

6. INDEMNIFICATION. GRANTEE hereby agrees to fully indemnify and hold GRANTOR harmless from any and all inquiries, claims and expenses, whether known or unknown, including but not limited to personal injury or damage to property arising out of or relating to the exercise by GRANTEE, or his guests, licensees or invitees, or any of the rights granted herein.

7. COVENANTS RUNNING WITH THE LAND. All of the terms and conditions of this Agreement shall be covenants running with the land which shall inure to the benefit of and be binding upon Lots A and B, the parties hereto and all of their heirs, assigns and successors in interest.

8. EXECUTION OF ADDITIONAL DOCUMENTS. Each of the parties hereto agrees to promptly execute such other and further documents as may be reasonably required by the other to carry out the purpose and intent of this Agreement.

9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding concerning the subject matter between the parties and supercedes and replaces all prior discussions or written instruments that are inconsistent with the terms and conditions contained in this agreement.

10. AMENDMENT TO AGREEMENT. This Agreement may be amended only in writing signed by the parties, and no provision of this Agreement may be waived or modified, except by an instrument in writing signed by all parties.

11. GOVERNING LAW. This Agreement shall be construed according to the laws of the State of Idaho.

12. ATTORNEY FEES AND COSTS. If any party is required to file suit to enforce any provision of this agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

13. SEVERANCE AND VALIDITY. In the event any provision of this Agreement or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or part thereof, shall remain fully in force and effect, and shall in no way be affected, impaired, or invalidated thereby, it being agreed that such remaining provision shall be construed in a manner most closely approximate to the intention of the parties with respect to the invalid, void, or unenforceable provision or part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

GRANTOR, Robert E. Fosnot

By: Robert E. Fosnot
Robert E. Fosnot

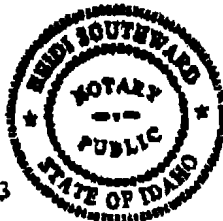
DATED: 8-19-2002

STATE OF IDAHO)

County of Blaine) ss.

On this 19 day of August, 2002, before me, a Notary Public in and for the State of Idaho, personally appeared Robert E. Fosnot, Grantor, known to me to be the person whose name is subscribed to the foregoing document, and acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Acknowledgement first above written.



Heidi Southward
NOTARY PUBLIC FOR IDAHO
Residing at: Hailey, Idaho
Commission expires: 12-8-2004

GRANTEE, (Insert name)

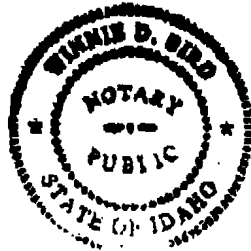
By: James R. Super
(Insert name) J.R.S.DATED: 10/03/02

STATE OF IDAHO

County of Blaine } ss.

On this 3 day of Oct, 2002, before me, a Notary Public in and for the State of Idaho, personally appeared James R. Super, Grantee, known to me to be the person whose name is subscribed to the foregoing document, and acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Acknowledgement first above written.



Winnie D. Bird
NOTARY PUBLIC FOR IDAHO
Residing at: Hailey
Commission expires: 6/23/05

FROM : WATER 37 37M

FAX NO. : 2088867930

Nov. 28 2006 10:52AM P10

MAR-30-2004 TUE 09:19 AM BLAINE CO TITLE HAILEY

FAX NO. 12051881885

F. OG

EXHIBIT A

LOT A

Lot 1 in Block 1 of DEAN RANCH SUBDIVISION, according to the official plat thereof, recorded as Instrument No. 169670, records of Blaine County, Idaho.

FROM : WATER 37 37M

MAR-30-2004 TUE 09:20 AM BLAINE CO TITLE HAILEY

FAX NO. : 2088867930

FAX NO. 12087881885

Nov. 28 2006 10:52AM P11 020

P. 08

EXHIBIT B

LOT B

A parcel of land in the SE1/4, Township 1 North, Range 18 East, of the Boise Meridian, Blaine County, Idaho, and more particularly described as follows: Section 24:

Commencing at an iron pin marking the East 1/4 corner of said Section 24; which is also the REAL POINT OF BEGINNING; thence

S.0 degrees 31'00" E., 664.5 feet along the East Boundary of said Section 24 to an iron pin; thence

S. 89 degrees 43'23" W., 1313.3 feet to a point on the East boundary of U.S. Highway No. 93; thence

N.0 degrees 31'00" W., 305.68 feet along said East boundary of U.S. Highway No. 93; thence

N.89 degrees 29'00" E., 327.85 feet to an iron pin; thence

N.1 degree 38'00" E., 357.94 feet to an iron pin; thence

N.89 degrees 40'30" E., 971.93 feet to THE POINT OF BEGINNING.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 5, 2003

Paul R. Fosnot
837 Laural Ave.
Pomona, CA 91767

Robert E. Fosnot
PO Box 290
Bellevue, Idaho 83313

RE: Snake River Basin Adjudication (SRBA)
Claim Numbers: 37-11688 & 37-11689A
Change of Ownership Notification

Dear Claimants:

With receipt of documentation showing that you have conveyed lands associated with a portion of the above referenced Snake River Basin Adjudication claims to Mark and Bette Gower, our records have been updated. The water right claims referenced above have been split between you and the Gowers, giving each party a proportionate share of the diversion rate. As a consequence, your rights have been renumbered; the enclosed copies are for your records, please review these documents for accuracy in all respects. If you have any questions or concerns, please contact me at this office.

The SRBA is an ongoing process; in the future, you may be notified with more information concerning your water right claim. You also may be asked to provide more information to assist us in correctly recommending your water right to the SRBA Court. It is, therefore, important that IDWR be kept informed of changes in ownership and address. We thank you for your continued cooperation in the Adjudication.

Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Regional Office, Twin Falls
vhancock@idwr.state.id.us



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 5, 2003

Carolyn Baird
Sun Valley Title Company
221 S River Street, Suite 2A
Hailey, Idaho 83333

RE: Snake River Basin Adjudication (SRBA)
Change of Ownership – Fosnot to Gower
SRBA Claims 37-11688, 37-353B and Domestic Water Right 37-11685

Dear Ms. Baird:

IDWR's Southern Regional Office has received your Notice of Change of Ownership and check for \$25 on behalf of Mark Allen Gower, however I am returning the check and copies of the materials pending clarification of the following inconsistencies:

- 1) Domestic water right 37-11685 was decreed in the SRBA January 5, 2001. The right was identified as being located in the NESE of Section 24, T01N, R18E. Mr. Gower has purchased Lot 1 of the Dean Ranch Subdivision, which according to Blaine County Taxlot maps is located in the SENE Section 24. (It is possible that right 37-11685 should now be in the name of Mark Swenke who, it appears, purchased 2.7 acres and a residence located in the NESE Section 24 from Miller in 2000. Miller purchased the 2.7 acres from Fosnot in 1995).
- 2) 37-353B is currently in the name of Edward Stricker. It does not appear that this right was conveyed to Gower by Fosnot.
- 3) According to our records 37-11688, as well as 37-11689A, are claimed to be appurtenant to the lot Mr. Gower purchased - see the 7.9 acres identified in the SENE Section 24 on the print-outs of those claims. The documents you submitted are sufficient to change ownership of these rights, however, because the rights are also appurtenant to acreage in the NESE Section 24 retained by Fosnot, the claims will be split proportionately between the parties.

If you determine from the Fosnots or Gower that domestic water right 37-11685 was incorrectly decreed in the NESE Section 24 instead of on Lot 1 in the SENE Section 24, your client may file a transfer to change the recorded location of the right. As you can see, the domestic use from this ground

water well was claimed to have begun in 1920, so the age of the residence should help determine where the water right is correctly located.

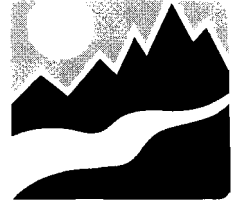
For your convenience, I have enclosed copies of all the Adjudication Claims and the decreed Water Right mentioned above. If you have questions I can be reached at this office by phone or email. We appreciate your help in updating IDWR's ownership records.

Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Adjudication Unit
email: vhancock@idwr.state.id.us

July 31, 2003

SUN VALLEY
TITLE
C O M P A N Y



Idaho Department of Water Resources
1341 Fillmore St
Suite 200
Twin Falls ID 83301-3380

RECEIVED
AUG 04 2003
Department of Water Resources
Southern Region

Re: 03-19020
Robert E. Fosnot
Mark Allen Gower
10739 State Highway 75 Blaine County, ID 83313

To Whom It May Concern:

Regarding the above, I have enclosed the following:

- Check in the amount of \$25.00
- Warranty Deed
- Change of ownership form

Sincerely,

Carolyn Baird
Escrow Officer



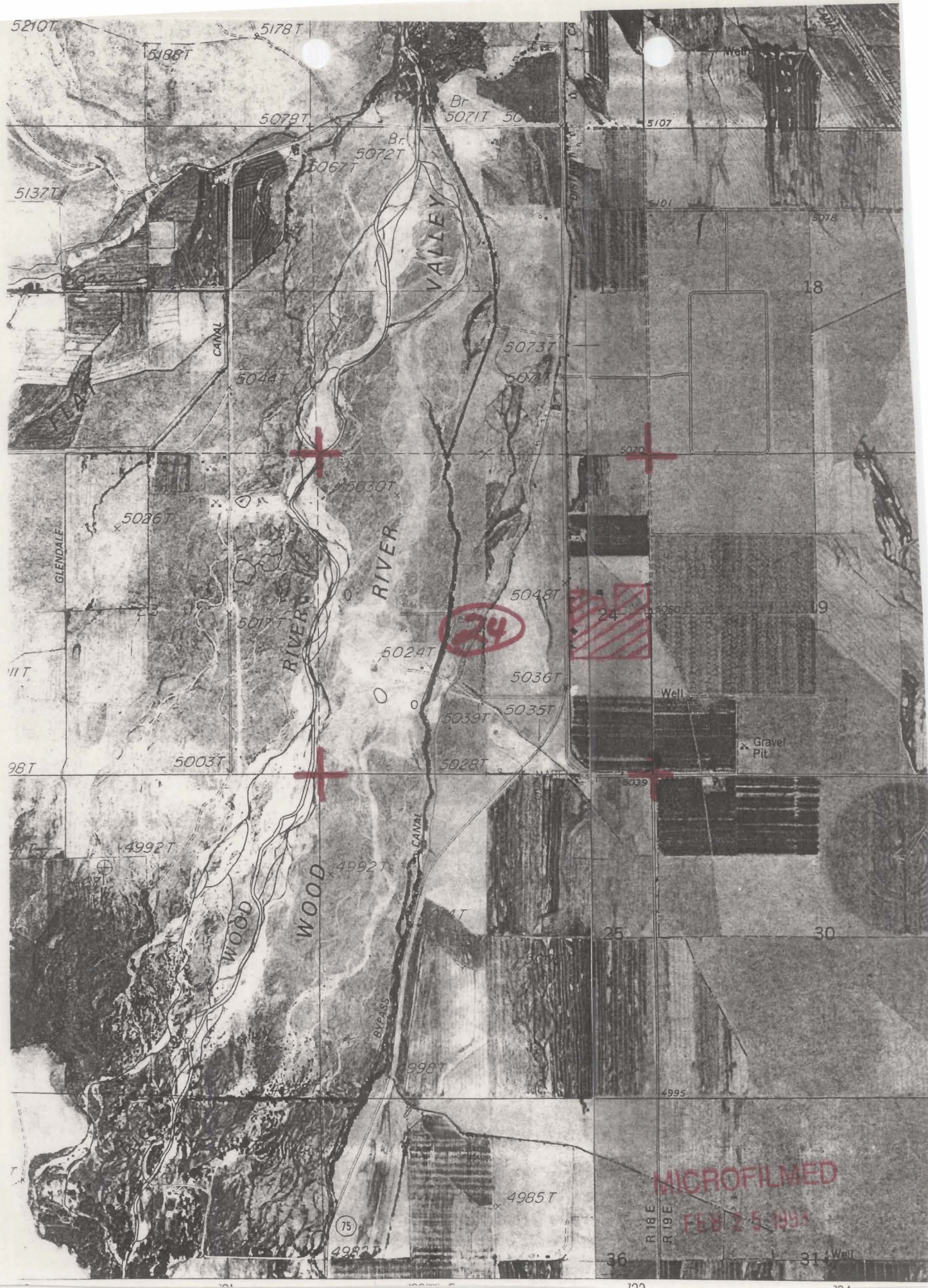
T2N R18E
SECTION 36

NE SW NW

T2N
T1N

MICROFILMED

FEB 25 1993



37-11688

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

JUL 24 1997
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF A CALL FOR)
DELIVERY OF WATER RIGHT NO.)
37-0353 TO OLSEN LIVESTOCK)
CONSULTANTS, INC.)
_____)

PRELIMINARY ORDER

Scott Campbell, an attorney representing Olsen Livestock Consultants, Inc., requested delivery of 0.40 cfs (20 miners inches) of water from the Big Wood River under water right No. 37-0353. After reviewing the files and records of the Department, Water District 37, and Blaine County, the Department of Water Resources enters the following Findings of Fact, Conclusions of Law, and Preliminary Order.

FINDINGS OF FACT

1. Water Right No. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. Alturas Water Co., et al. The right is for 6.4 cfs to be diverted from the Big Wood River for irrigation of the E1/2SE1/4 of Section 13 and the E1/2NE1/4, Section 24, T1N R18E, B.M., Blaine County (approximately 160 acres). The water right has been diverted into the Wood River Valley Irrigation District No. 45 canal located within the SW1/4NW1/4, Section 36, T2N, R18E, for delivery to users of the water. The priority of right No. 37-0353 is June 12, 1886.

2. The decreed place of use for right No. 37-0353 was divided in the early 1970's into an 18 lot subdivision known as the Dean Ranch Subdivision. The records of the Department and Water District 37 indicate that right No. 37-0353 was appurtenant to and used upon the decreed place of use up to the time the land was subdivided and on some of the subdivision lots and other land each year thereafter. Lot 2, Block 1 of the subdivision has not been irrigated for more than 10 years as evidenced by a review of aerial photographs and other information available to the department.

3. Olsen Livestock Consultants, Inc. claims ownership of Lot 2, Block 1, Dean Ranch Subdivision. The deeds in the chain of title filed with Blaine County for this lot from the creation of the subdivision to the present are summarized as follows:

- a. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

- b. Charles A. and D. Anne Curtis deeded Lot 1 with appurtenances to Robert E. Fosnot on October 19, 1978. Appurtenant water rights were not specifically described.
- c. Charles A. and Debra Anne Curtis deeded Lot 2 with appurtenances to Dean R. and Judene Call on December 5, 1978. A water right with an 1887 priority date for 20 inches was specifically included.
- d. Dean R. and Judene Call deeded Lot 2 with appurtenances to Robert D. and Sharyl M. Head on August 5, 1991. A water right with an 1887 priority date for 20 inches was specifically included.
- e. Robert D. and Sharyl M. Head deeded Lot 2 with appurtenances to Olsen Livestock Consultants, Inc. on September 25, 1996. Appurtenant water rights were not specifically described.

4. Blaine County does not have any record of deeds transferring title of any part of Water Right No. 37-0353 separately from the appurtenant land during the time period of December 15, 1969 (date land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).

5. Water District 37 records list the following as the current owners of water right No. 37-0353:

- a. Harry L. Oppenheimer (20 miners inches) based upon a letter dated October 27, 1977 from M. D. Dean confirming the sale of the water to Jerry Lee Johnson, a February 16, 1978 warranty deed from Jerry Lee Johnson to Marvin Lotspeich, and a 1980 warranty deed from Marvin Lotspeich to Harry L. Oppenheimer.
- b. Robert Kierstad (40 miners inches) based upon an October 28, 1977 letter from M. D. Dean confirming sale of water to Mr. Kierstad.
- c. Ed Stricker (20 miners inches) based upon an October 29, 1977, letter from M. D. Dean confirming sale of the water to Mr. Stricker.
- d. Gus Chek (10 miners inches) based upon a November 1, 1977, letter confirming sale of 20 inches of water to Mr. Chek. Mr. Chek subsequently sold 10 inches to Douglas Driever.
- e. Douglas Driever (10 miners inches) based upon an October 4, 1991 letter from Gus Chek confirming sale of the water and Transfer No. 3679 approved by the department.

f. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.

g. J Karl Bick (20 miners inches) based upon a June 25, 1982 letter from M. D. Dean to John Peterson and a quit claim deed dated November 3, 1993 from John Peterson to J Karl Bick.

h. Robert Fosnot (20 miners inches) based upon Transfer No. 2948 approved by the department.

6. The records of Water District 37 list a current owner for all 6.4 cfs (320 miners inches) of right No. 37-0353. Olsen Livestock Consultants, Inc. is not listed as a current owner by the water district. The watermaster records indicate that an assessment has not been paid for delivery of water for use on Lot 2, Block 1, Dean Ranch Subdivision since 1982 or earlier.

7. The following have claimed portions of right 37-0353 in the Snake River Basin Adjudication (SRBA):

- | | | |
|----|---|--------------------|
| a. | A37-0353 J. Karl & Judith G. Bick
(This claim was originally filed by John Peterson.) | 20 miners inches |
| b. | A37-0353B Edward & Jeannine Stricker | 20 miners inches |
| c. | A37-0353D Robert & Kathryn Gardner | 180 miners inches |
| d. | A37-0353E Harry L. Oppenheimer, Jr. | 20 miners inches |
| e. | A37-0353F William R. Long | 10 miners inches |
| f. | A37-0353G Douglas Driever
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| g. | A37-0353H Reid Kantenwein
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| h. | A37-0353J Tom Olsen | 13.5 miners inches |
| i. | A37-11688 Paul R. & Robert E. Fosnot
(This claim is based upon water right No. 37-0353.) | 20 miners inches |

8. The SRBA claims on file total 303.5 miners inches.

9. The Water District 37 records show that Wood River Valley Irrigation District No. 45 has paid the Water District 37 assessments for 1997 for Gus Chek and for 1996 and 1997 for Robert Kierstad.

10. The Department, Water District 37, and Blaine County records do not show the transfer of an 1887 water right to Lot 2, Block 1, Dean Ranch Subdivision.

11. Water District 37 has been active each year since 1974 and earlier.

12. Rule 104 of the "Rules of Procedure of the Idaho Department of Water Resources", IDAPA 37.01.01, authorize the department to initiate a formal proceeding by issuing an informal determination that will become final in the absence of further action by the person(s) to whom the document is addressed.

CONCLUSIONS OF LAW

1. Water right No. 37-0353 has not been forfeited as evidenced by the Water District 37 records of delivery and use, although use has not occurred on Lot 2, Block 1 Dean Ranch Subdivision for many years.

2. Lot 2, Block 1 Dean Ranch Subdivision was included in the decreed place of use of water right No. 37-0353. Unless a change in place of use was made in accordance with a valid transfer procedure, water right No. 37-0353 is prorated uniformly to the place of use; i.e., 2 miners inches to each acre of the place of use, *Crow v. Carlson*, 107 Idaho 461 (1984).

3. A water right is an appurtenance to the land and passes by conveyance of the land unless it was specifically reserved in the deed or it can be clearly shown that it was known to both parties that the water right was not intended to be conveyed. *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). Because the 1974 deed from M. D. and Katherine Dean to Charles A. and Debra Anne Curtis did not specifically reserve water rights from the sale, a proportionate share of water right 37-0353 remained appurtenant to the parcel. Deeds and letters confirming the sale of portions of the decreed water right issued by M. D. Dean subsequent to the 1974 deed to Curtis purporting to convey water rights could not have moved the water right from Lot 2.

4. The reference to an "1887" water right in the chain of title to Lot 2, Block 1, Dean Ranch Subdivision, appears to be a typographical error in describing the appurtenant May 12, 1886 priority water right because documentation has not been found to associate an 1887 priority water right with Lot 2, Block 1, Dean Ranch Subdivision. The inclusion of this reference to a water right in the deed to Mr. Call indicates that Mr. Curtis understood that a water right was appurtenant to Lot 2, Block 1, Dean Ranch Subdivision.

5. Section 42-607, Idaho Code, provides that a water user can not adversely possess the water rights of another user in an active water district.

6. The information available to the department indicates that a proportionate share of water right No. 37-0353 is appurtenant to Lot 2, Block 1, Dean Ranch Subdivision owned by Olsen Livestock Consultants, Inc. The watermaster of Water District 37 should be instructed to deliver the water to the authorized point of diversion for delivery and irrigation use.

7. The department is not able with the information presently available to determine which of the persons presently listed in the Water District 37 records as owning a portion of water right No. 37-0353 are not entitled to the full amount attributed to them. This matter is left for further determination by the department or the district court. Because some of the persons listed as owning part of the right are not calling for delivery under the right and have not done so for several years, the watermaster can satisfy the Olsen Livestock Consultant, Inc. call without otherwise changing the delivery to those entitled to use the water. If calls for water by those entitled to receive the water exceed the total amount of the right, delivery to each user will be proportionately reduced until the ownership issue is resolved.

ORDER

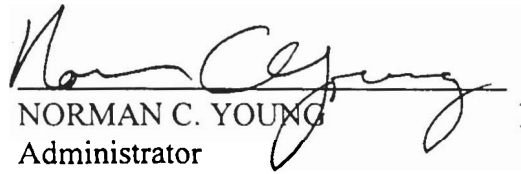
IT IS, THEREFORE, HEREBY ORDERED:

1. The watermaster of Water District 37 is instructed to deliver 0.20 cfs of water right 37-0353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Olsen Livestock Consultants, Inc. Prior to delivery of the water under this order, Olsen Livestock Consultants, Inc. shall have paid any applicable Water District 37 assessments.

2. This Order does not constitute a determination that Olsen Livestock Consultants, Inc. has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.

3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-0353 is no longer appurtenant to Lot 2, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-0353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

Signed at Boise, Idaho, this 22ND day of July, 1997.


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of July, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

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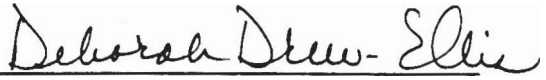
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DEBORAH DREW-ELLIS
Legal Secretary